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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 800774

STATE HIGHWAY & TRANSPORTATION
COMMISSIONER OF VIRGINIA,

Appellant,

v.

JOHN H. LINSLY and
JEAN B. LINSLY

Appellees.

APPENDIX

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PETITION

Filed: September 17, 1979

Your Petitioner, STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA, files this Petition in accordance with Title 25, Chapter 1.1, and Title 33.1, Chapter 1, Article 7, of the Code of Virginia (1950), as amended, and such general laws as are applicable for the purpose of condemning the land hereinafter described and alleges as follows:

1. MARSHALL L. HANEY is the duly authorized agent and attorney for the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA for the purpose of instituting this condemnation proceeding as is shown by a signed declaration hereto attached, marked "Exhibit A," and asked to be read as a part of this Petition, and MARSHALL L. HANEY is authorized to file this proceeding in the name of and on behalf of the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA.

2. The real estate which is affected in this proceeding lies in Saluda Magisterial District in Middlesex County, Virginia, and is further described as follows:

> Being as shown on Sheet 3 of the plans for Route 17, State Highway Project 6017-059-101, RW-201, and lying on the west (left) side of the survey centerline and adjacent to the west existing right of way line of present Route 17, from the lands of Oliver D. Ulmet and Elaine A. Ulmet, opposite approximate Station 1490+42 to the south line of a 20 foot right of way opposite

approximate Station 1492+30 and containing 0.48 acre, more or less, land.

From a point lying on the west proposed limited access line opposite approximate survey centerline Station 1490+42 the lands of Oliver D. Ulmet and Elaine A. Ulmet thence along said west limited access line to a point opposite approximate Station 1492+30, the south line of a 20 foot right of way, being easements of access, light or air incident to the lands of the landowner abutting upon this proposed Limited Access Highway, any ramps, loops or connections at or with intersecting highways.

This property is also shown on a plan or plans on file in the Central Office of the State Highway and Transportation Department, Richmond, Virginia, identified as Route 17, Project 6017-059-101, RW-201, Sheets #3 and #3A, a copy of which plans are hereto attached, marked "Exhibit B," and prayed to be read as a part of this Petition.

3. The right and property intended to be compensated for in this proceeding is the fee simple interest to the land shown within red lines on the aforesaid plans along with such easements as are needed, all of which is described and set forth in "Exhibit B" and described in detail in Paragraph 2 of this Petition.

4. The aforesaid land and easements are necessary for the construction, reconstruction, alteration, maintenance, and repair of a highway system known as Route 17 in Middlesex County, Virginia, all of which is properly declared in "Exhibit A" attached hereto. The said Route having been designated, or declared to be, a Limited Access Highway, pursuant to Article 4, Chapter 1, Title 33.1, of

the Code of Virginia (1950), as amended, the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA declares it necessary to be taken any and all easements of access, light, or air incident to the land of the landowner abutting upon said Limited Access Highway, any ramps, loops or connections at or with intersecting highways.

5. This project is for the construction or improvement of a section of arterial Highway System Route 17, from 2.210 Mi. N. Int. Rte. 33 (Glenns) to 3.607 Mi. N. Int. Rte. 33 (Glenns) and will include the right to construct, reconstruct, repair, improve, alter and maintain the said Route in accordance with the attached plans marked "Exhibit B." It also includes the right to utilize the land in the future (1) for construction, reconstruction, alteration, improvement, repair and maintenance of the said Route, (2) for all other Highway purposes, and (3) in accordance with all the rights and incidents normally acquired in the property by fee simple, easements, etc.

6. Your Petitioner has made a bona fide but ineffectual effort to purchase said real estate and easements from the owner thereof and has been unable to do so because of inability to agree upon the purchase price. In attempting to purchase said property, Petitioner has complied with § 25-248 of the Code and, to the extent applicable, has complied with § 33.1-89 of the Code.

7. On or about the 7th day of September 1978, your

Petitioner caused to be recorded in the office of the Clerk of the Court in Deed Book 119, at Page 126, Certificate #C-29000, as provided by Title 33.1, Chapter 1, Article 7 of the Code.

8. Thereupon, pursuant to the provisions of the aforesaid Title 33.1, Chapter 1, Article 7 of the Code, title to the land described in Paragraph 2 vested in the Commonwealth of Virginia.

9. Your Petitioner is of the opinion that the only persons who are entitled to an interest in the compensation to be ascertained by this proceeding are: JOHN H. LINSLY and JEAN B. LINSLY, his wife, with the exception of the holders of the following liens:

(a) Taxes due the County of Middlesex, Virginia, for 1974; and,

(b) Judgment against Guy E. Williams in favor of Miller Chevrolet, Inc., dated September 3, 1960, in the amount of $438.21, plus interest, recorded in the Clerk's Office of this Court in Judgment Lien Docket Book 5, Page 254;

as disclosed by title examination of the above described land.

WHEREFORE, your Petitioner respectfully prays to this Honorable Court that, in accordance with the provisions of Title 25, Chapter 1.1 of the Code, commissioners may be summoned and appointed to ascertain the value of the land taken including easements and damages, if any, which may accrue to the residue byond the enhancement in value, if any, to such residue, by reason of the taking; that this

Court be directed to confirm the vesting of title in the Commonwealth as aforesaid and take all such other steps to carry out the intents of Title 25, Chapter 1.1 and Title 33.1, Chapter 1, Article 7 of the Code as may be necessary; and that your Petitioner may have such other further and general relief as the nature of the case may require.

INSTRUCTION NO. 11

The Court instructs the Commissioners that the owner of land abutting a public highway is only entitled to reasonable access to his property. His rights of access are subordinate to the right of the State to control traffic over its highways. If you find that the landowners in this case will have reasonable access to the property after the construction of this project, you shall not make any awards for residue damages that might result from a change in access.

INSTRUCTION NO. a

The Court instructs the Commissioners that the State Highway Commissioner in this proceeding is establishing by condemnation a limited-access highway and that the establishment of such highway, under the law, prevents the defendants, John H. Linsly and Jean B. Linsly, their heirs and assigns, from having access to said highway, and that their right to access to said highway is hereafter restricted to the use of the service road as the only means of ingress and egress to said limited-access highway; and the Court further instructs you, as a matter of law, that the said John H. Linsly and Jean B. Linsly, have a right and easement of ingress and egress to the existing highway, by reason of the fact that their land abuts upon and adjoins the present highway; and you are instructed that in fixing the value of the property taken off of the said landowners, and in determining damage to the residue of their property, you should take into consideration the fact that the landowners will not have an easement of ingress and egress to the new highway as heretofore from their abutting land, and you should allow a just compensation for their right of ingress and egress to the highway which is terminated and extinguished in this proceeding, and for such damages to the residue of thier land, if any, which they shall sustain by reason thereof.

1 property. We proceeded then to the area here, which I cannot
2 say is marked in blue and red, because that would be the
3 beginning of the limited access fence.
4 We proceeded further back, this being the
5 area where the well is located. We then came across -- as I
6 indicated, there is also a fence here. This is the area
7 where the stake was knocked over, and that was the driveway.
8 We proceeded down here to the stake that was located in the
9 middle of the driveway there, and from there, we proceeded
10 back along the highway, back to the starting point.
11 Q There is an easement owned by Mr. Linsly
12 on this property or in the whole or adjoining property; is
13 that correct?
14 A There is an easement adjoining.
15 Q That is within the take?
16 A Part of it is.
17 Q How much?
18 A This lower section down here is where the
19 stake is. I have not counted that, as far as differentiating
20 from the take itself.
21 Q The lower stake on Route 17?
22 A The one driven down in the driveway.
23 MR. TRIBLE: Closest to Saluda.
24 MR. HANEY: Thank you. I have no further
25 questions.

1 CROSS-EXAMINATION
2 BY MR. TRIBLE:
3 Q As I understand it, Mr. Linsly's property,
4 from what we saw this morning, goes over to the approximate
5 center of that twenty-foot right-of-way, which goes back to
6 the shop in the rear of his property; is that correct?
7 A That is correct.
8 Q In effect, you are taking that part of
9 his property within an easement; is that correct?
10 A That part is included.
11 Q The plan specifications further show that
12 this fence will go right across that road; in other words, you
13 won't be able to use that road anymore, according to your plans?
14 A According to the plans, but this is not
15 included in the parcel.
16 Q I understand that is the next parcel, but
17 I am saying that the plans for future construction--
18 MR. HANEY: I object. We are trying here
19 today to take that part involving Mr. Linsly's
20 property as shown on these plats.
21 THE COURT: Mr. Trible, you have heard the
22 objection.
23 MR. TRIBLE: He testified to that, on the
24 assumption that it is part of the plans. We can
25 consider future development, according to the

1 construction plans.
2 THE COURT: I believe someone asked the
3 question about how far up the road it would be.
4 I believe one of the Commissioners asked that on
5 the view.
6 MR. TRIBLE: He said that it went over.
7 THE COURT: He answered that, did he not?
8 MR. TRIBLE: I just wanted to bring out
9 that the fence will go over the entire road. That
10 is all I wanted to bring out.
11 THE COURT: Let me ask him that.
12 Is that correct, sir?
13 THE WITNESS: Yes.
14
15 BY MR. TRIBLE: (Continuing)
16 Q I am not a highway engineer, but that is
17 something called a limited access highway; is that correct?
18 A That is correct.
19 Q Would you tell these gentlemen what a
20 limited access highway is?
21 A A limited access highway is one that the
22 entrances and exits are limited, just as it implies. You cannot
23 have a driveway coming out into it. Interstate 95 is a limited
24 access highway. There are only certain places that you can
25 come on and off it.

Q As I understand it, the plans call for some kind of service road that you stated will run parallel with the fence, I believe?

A That is right.

Q Would you tell us what the plans call for, as far as the construction materials to be used in this service road? Do the plans show it to be a dirt or gravel--

A No, I cannot tell you, Mr. Trible, what the materials will be that will be used on this road.

Q Would you tell me how far this property will be from the nearest entrance to Route 17 and 33, once you construct the road and put the fence there?

A Approximately 400 feet.

Q Approximately 400 feet, going down the road before you get to 33 or 17?

A That is right.

MR. TRIBLE: May I have the Court's file, Your Honor? I would like to see the certificate. I think there is a copy of it filed in there.

THE COURT: Certainly.

BY MR. TRIBLE: (Continuing)

Q Do your plans also show that the Highway Department is acquiring a Vepco easement, an easement for Vepco?

and the water line $103.00. The two oil tanks, $202.00, and the signs, $710.00. There were approximately 4,933 square feet of asphalt parking, which I estimated at $2,467.00.

Q That would be a total of what, including the land now and the improvements within the take?

A $56,551.00.

Q As I understand your testimony, there was some remaining property --

A Right.

Q -- that was left after this acquisition; is that correct?

A That is right, yes, sir.

Q Did you value this residue before the take?

A Yes, sir, I did. I estimated the value of this property before the take, the value of the residue, at $22,020.00.

Q Did you place a value thereon after the acquisition?

A Yes, sir, I did. After the acquisition, I valued the residue at $12,658.00.

Q If we could break that down, as far as the residue after the take, what did you value the land at?

A After the acquisition, I valued the land, 1.767 acres of land left before the acquisition, a portion of that was estimated by me to be worth approximately $23,000.00

1 an acre, and a portion was worth $34,000.00 an acre.
2 After the acquisition, I estimated all of
3 it to be worth $3,400.00 an acre. I felt some portions of the
4 land went from $23,000.00 an acre down to $3,400.00 an acre.
5 Q What would that bring your appraisal to?
6 A There were also some damages there because
7 of some misplaced improvements. There was some asphalt that
8 was not being acquired, but which really had no use after the
9 Highway Department made its acquisition, and there were some
10 drain fields that, although you did not acquire that for use
11 after the acquisition, there was a damage factor there. If you
12 take the value of the residue before the take, which I estimated
13 at $22,020.00, and the value of the property after the take,
14 which I estimated at $12,658.00, you get damages here of
15 $9,362.00.
16 Q What were the reasons for the damages?
17 You said there were misplaced improvements?
18 A Right. Well, the property before had
19 reasonably good market appeal because it had reasonably good
20 appearance for commercial property. After the acquisition, I
21 think it could still be utilized in some commercial fashion,
22 but not as intense as what it was before. I think you would
23 have to use it for something like a garage, a building or
24 something that did not depend on direct drive trading. I felt
25 it just was not as desirable afterwards as it was before.

There were some items here within the residue after the take that really had no value. There was 845 square feet of asphalt parking, which really had no value after the take, which the Department of Highways did not acquire. There was 53 feet of water line that did not have any value, and about 400 square feet of drain field, which, in my opinion, did not have any value.

So, they entered into the damage figures, also.

Q In summary, is your testimony, so that the gentlemen of the Commission might have the benefit of your expertise, that you valued the land here that was taken? What was the total?

A $11,040.00.

Q The buildings that were within the take?

A $40,206.00.

Q I believe you said there was some landscaping, also?

A I estimated there to be approximately $250.00 worth of landscaping.

Q There were various sundries, other improvements?

A $5,055.00.

Q And the damages?

A There were damages of $9,362.00, for a

total of $65,913.00.

Q The $65,913.00 would include the value of the land and the improvements taken, and the damages to the residue?

A That is correct.

Q What did you find to be the highest and best use of this property?

A I think it was a commercial piece of property. The front, which is almost an acre of it, would be considered good commercial property. The back portion of it, I think has some possible commercial utilization, but really, before there was plenty of other land that was more suitable. I think it had commercial potential, but the front portion was being utilized, and the back portion was not.

Q In making your appraisal of the land here, could you tell the gentlemen of the Commission what facts you based your appraisal upon, what approach you took?

A As far as the land value, I talked to people in the area here that were in real estate, and people that were in business in Saluda Village. I talked to Mr. Pitts down at Pitts' Lumber Company, and the fellow who runs the Saluda Market, just to get opinions and thoughts as to what they thought the growth in this area was and what were the development trends.

I did some research in the court house to

A An elderly gentleman, I guess in his 60's, and he was driving an El Camino.

Q How long did you talk to him?

A Twenty minutes.

Q You said you put 40 hours in this appraisal?

A Approximately, yes, sir.

Q Did you thoroughly examine the entire property owned by Mr. Linsly?

A Right.

Q Did you walk the whole property over?

A No, I did not walk every foot of all four property lines, but I would say, yes, I thoroughly investigated it.

Q About how long did you take in that thorough investigation?

A Well, on two different occasions, a total of four hours or five hours.

Q About five hours there?

A Right.

Q You will recall that there is a garage which is designed for the repair of trucks or cars right to the rear of Mr. Linsly's property?

A Right.

Q How did you get to that garage?

A From where?

Q From Route 17 and 33?

A You can walk back to it along an easement, a right-of-way easement, or walk back to it directly from Mr. Linsly, the front of Mr. Linsly's property.

Q There was an easement to it from Route 17 and 33?

A Right.

Q In studying these plans, what did you discover about a fence that the State Highway will put up with reference to the easement?

A I think the fence will go across the easement, as it will go across the entire property.

Q That easement is effectively in the take of this property, is it not?

A Well, not in this particular take, no. In this particular take, it is just within the two property lines, as I am sure everyone saw on the view.

Q Did you study the plans carefully?

A Right.

Q The stake is in the middle of the road for the State Highway take; do you know that, sir?

A No.

Q Had you known that, wouldn't that have made a difference in your appraisal?

A Absolutely no.

Q It would not?

A No.

Q If there is an easement from Route 33 and 17, back to that garage that the State Highway Department is taking, can you say that a fence right across that road would not have made a difference in your appraisal?

A No, sir, because I am appraising X number of acres, X number of square feet of land, regardless of whether there is a driveway on it or not. Now, the driveway may be -- perhaps the driveway is not on the recorded easement. All I am saying is, the property that is under appraisal here is not in the consideration of the easement.

Q Let me ask you this: Let's go back to something, so maybe I can understand.

If I have a house down in the woods off the highway with no right-of-way to it, is that worth just as much as that same house with a right-of-way out to the public road?

A No.

Q Let's get back to the little garage in the back. It has a right-of-way to it, and that right-of-way is being acquired by the State Department of Highways.

Did you consider the value of that right-of-way in your appraisal?

A I considered the value of the land within

1 the acquisition area. The property's desirability after that
2 access is taken is very definitely considered.
3 Now, I think I stated that. If I am not
4 making myself clear--
5 Q Maybe I am not making myself clear.
6 I have a right-of-way down to this
7 building, and the State Highway is taking that easement.
8 Did you put a price on that easement of
9 access to that building?
10 A No.
11 Q You did not?
12 A No.
13 Q I would assume that you take the position
14 that that building back behind there, that is left on the
15 residue, is worth as much as with an easement as it is without
16 it; is that correct?
17 A The building that is left behind?
18 Q Yes, sir, the garage that you repair trucks
19 and cars in.
20 A I do not know, Mr. Trible. The land itself
21 is what suffers the diminished value. The building is not
22 being utilized. It is not being used for anything other than
23 it could be used for a garage. But, the land itself is what
24 suffers the loss, not the building.
25 Q In other words, the building or the land

on which the building is located is worth as much as without that easement to the public road as it is with it?

A No, no. I am saying that the land suffers a loss after the acquisition, the highway acquisition.

Q Hasn't that land been damaged by the loss of that easement?

A If the easement has been lost. But, we are not condemning the easement. My appraisal does not take that into consideration.

Q Suppose I tell you that on the view, these gentlemen were told by this man from the State Highway Department that Mr. Linsly's property goes right in the middle of that easement?

A Okay.

Q That would make a difference in your appraisal, would it not?

A Well, that would mean that the easement is no more?

Q That is correct, there was no more easement.

A Well, in that case, if the easement was on Mr. Linsly's property to begin with.

Q What about the other ten feet on the other property?

A Then, no. That ten feet has never been any more than a ten-foot easement.

Q It is a twenty-foot easement that serves his property. You understand it can serve both properties?

A If the easement is twenty feet, with ten feet on the other land, then the easement is only ten feet.

Q If I own a piece of property adjacent to you, and let's say that Mr. Linsly owns the land back behind us, and he has got a right-of-way over a strip of land twenty feet, ten feet on you and ten feet on me, do I understand you to say that neither you nor I have the right to use that twenty feet?

A No, you are not interpreting me correctly.

Q Please explain.

A If the easement is twenty feet--

Q Twenty feet in width.

A The easement has got to be twenty feet, if there is a property line there and the easement is twenty feet starting on the outside of that property, then that easement is twenty feet. If the easement is not supposed to infringe on the property line, then the only part that has an actual easement would be that portion that is outside of the property line.

That is my general understanding. You know, I am no attorney.

Q Are we in agreement that the fence is going to block that road?

1 A Yes, sir, we can agree on that.
2 Q Can we agree that you get back to the
3 garage from Route 17 and 33 over that road?
4 A Right.
5 Q We are in agreement that that road, so
6 much thereof, is being taken by the State Highway Department?
7 A Yes.
8 Q Did you put any value on the take, that
9 part of the take?
10 A Certainly.
11 Q How much?
12 A Well, I valued it at $23,000.00 an acre.
13 Q You did not give any additional value to
14 the part that is in the road; is that correct?
15 A I valued the front acreage of 188 or 189
16 or 190 feet; whatever fell within those property lines, that
17 is what I valued. If that easement fell within those property
18 lines, then it was valued.
19 Q How much did you put on that easement?
20 A $23,000.00 an acre.
21 Q How much is in the easement?
22 A Well, I don't know. I would have to
23 measure it.
24 Q Isn't it a fact, Mr. Morrison, and let's be
25 perfectly honest, that you did not take into consideration any

1 easement in this matter?
2 A I appraised the property that was condemned,
3 the 189 feet. If the easement fell within that condemned
4 property, then it was appraised. If it did not fall within
5 that condemned property, then it was not appraised.
6 Q Look at your notes, and tell me if you
7 appraised an easement.
8 A Gentlemen of the Commission, if that easement
9 was within the 189 feet, between the property lines, it was
10 appraised, and it was appraised at $23,000.00 an acre.
11 Q How much was that garage worth in the back
12 before the take?
13 A Before the take?
14 Q Yes, sir.
15 A $6,650.00.
16 Q How much was it worth after the take?
17 A $6.650.00.
18 Q It did not affect your valuation, that there
19 was no longer a right-of-way back to the garage from Route 17
20 and 33; is that correct?
21 A As long as the property had access, no.
22 Q I want to talk about these buildings. You
23 said you called Frank Brooks. Did you bring him down and
24 have him look at the buildings?
25 A I went to his office.

A Right.

Q Are you aware that what is left over will not percolate?

A The remaining land?

Q That is right.

A No, I was not aware of that.

Q If I made you aware of it, would it have made a difference in the damage value to the rear part of that property?

A It may have, yes, but you have got to take into consideration the fact of what the remaining land's highest and best use is. The highwst and best use would be for low grade commercial usage, and if it could not percolate at all. Then you would have to say that the higest and best use would change to plottage land to the adjoining land.

Q Then, it would have been damaged?

A It might have been damaged a little more.

Q Did you go into the question of whether the land would percolate, that land which was left?

A No, I did not. I assumed that it would percolate.

Q If I told you it will not perk, would it have made a difference?

A It would change the land's highest and best use from low grade commercial property to plottage land.

In plottage land, the value of the land is usually assumed to be the same as that land that it is adjoining. That may or may not be less than $3,400.00 an acre, but I don't know. It is conceivable that the property would be less than $3,400.00, the remaining land.

Q That would be damages, wouldn't it?

A Yes.

Q It is a fact that you did not go into the question of whether it perked or not, did you?

A No.

Q That is something you should have done, should you not?

A Well, I made an assumption that the property would perk. If it won't perk, yes, it is possible I overlooked that.

Q Yes, sir, it certainly is.

We were talking about this water, and you told these gentlemen about these wells 60-feet deep, and you put a value on them.

Were those wells concrete encased?

A I believe they were.

Q Did you happen to look at the pumps?

A Oh, yes.

Q Then, I am certain that you saw whether they had been winterized?

Q How many feet are in there?

A Approximately 135.

Q Are you sure there is not 200 feet running in a diagonal direction?

A I am pretty sure it is not.

Q Did you go out and ask Mr. Linsly where it was located or take a measurement?

A I asked him where it was located, and I estimated.

Q You estimated?

A Right.

Q What kind of service road, what material was used to service this property?

A The service road? I really do not know. I would assume it was at least an all-weather surface, probably paved, but I do not know.

Q You did not take the time to look to see whether it was going to be a dirt road or gravel road or a paved road?

A Oh, I am sure I did. That has been a couple of years ago, and I cannot remember.

Q Would your notes show it?

A No.

Q Would it make any difference to the remainder of the land whether it was served by a dirt road or

a paved road, as far as its value?

A I do not know. Yes, it could.

MR. HANEY: I object.

THE COURT: There is an objection to the question.

MR. HANEY: Your Honor, I think it would be better if I stated the grounds for my objection outside the hearing of the Commissioners.

THE COURT: All right. Gentlemen of the Commission, please step outside.

NOTE: At this point, the Commissioners have left the courtroom.

COMMISSIONERS OUT

MR. HANEY: Your Honor, if it please the Court, the basis for my objection is, counsel for the landowner is now getting into the area of damages as a result of the limited access road. It is our contention that the law is that the landowner is entitled to reasonable access to his property, and for as long as he has that reasonable access, whether it is changed or not, is not a compensable item.

THE COURT: Yes, sir, I believe that is the

COMMISSIONERS OUT

law.

MR. HANEY: I believe the thrust of Mr. Trible's question was directed in that direction, in giving a valuation of damages based on access, which under the law, Your Honor, is not a compensable item.

THE COURT: I presume these plans show that this easement is outside of the 180-some feet, is it not?

MR. TRIBLE: It is right in the-- It was staked out there.

THE COURT: Is the map correct?

MR. HANEY: It is a corner, Your Honor.

THE COURT: Does the plan show what you are getting for the Highway Department?

MR. HANEY: Yes, sir.

THE COURT: It is correct?

MR. HANEY: Yes, sir, and it also shows where the easement is located.

THE COURT: I think you understand the law there.

MR. TRIBLE: I do not know whether I understand you or whether Mr. Haney does not understand it, but I have an authority here in Nichol's, and I also have the model instruction

COMMISSIONERS OUT

1 prepared by the State Highway Department. This case
2 is right on point. I was getting to the point of
3 whether the property would be less valuable because
4 there was a dirt road and dust flying around as
5 opposed to a hard surfaced road.
6 MR. HANEY: That is a matter of access.
7 THE COURT: Yes, I think noise and dirt --
8 There is a special instruction that that is not
9 compensable.
10 MR. TRIBLE: I have the authority, and I
11 want you to read what I have here, because clearly
12 in Virginia on a limited access--
13 THE COURT: How do you know what he is
14 going to say? Do you know what he is going to say?
15 I think the question was asked, but do you know what
16 kind of limited access surface would be provided?
17 MR. TRIBLE: I know my people know, but I
18 want to find out if he knows.
19 MR. HANEY: It is not a compensable item.
20 THE COURT: I do not get the issue here.
21 MR. TRIBLE: It is absolutely compensable.
22 There is an authority involving a service station,
23 where they wanted access, and the law said they were
24 entitled to reasonable access. I have the authority.
25 THE COURT: I would like to see it.

COMMISSIONERS OUT

MR. TRIBLE: There is no two ways about it.

MR. HANEY: We have the authority for the other approach, Your Honor.

MR. TRIBLE: You might want to look at the little footnote there that was prepared by the State Highway. Here is Nichol's on Eminent Domain, which says that it is clearly a property right, that they were taking the easement. What Mr. Haney has is a service station case.

MR. HANEY: It is the same principle, Your Honor.

THE COURT: Therefore, in determining the damage, if any, to the remaining land of the owner, you must not consider as an element of damage that said remaining land or easement taken from it or the owner for the reason there was no such right-of-way or even an easement or access road by the owner pursuant to the description of the land at the time taken by the State Highway Commissioner.

MR. TRIBLE: Judge, we are joined. Here is Nichol's. We have joined the road, and they are taking a property right.

This is the instruction I wanted you to read, this one right here.

THE COURT: All right. Let me see your

COMMISSIONERS OUT

1 point.

2 MR. HANEY: The first case I have, Your

3 Honor, is State Highway Commissioner v. Easley,

4 215 Va. 197.

5 MR. TRIBLE: Does it deal with the limited

6 access highway?

7 MR. HANEY: It deals with the median strip.

8 It is the same priciple.

9 THE COURT: Didn't this gentleman testify

10 there was some damage to the residue because of the

11 limited access road? Didn't he testify to that?

12 MR. TRIBLE: No. What he stated, Your

13 Honor, were damages due to the property not being

14 desirable after the acquisition.

15 THE COURT: The land was not as desirable

16 with the access as it is with the right-of-way

17 straight to the highway?

18 THE WITNESS: I do not know. It is my

19 understanding that if it is accessible, then it

20 is not compensable. But that did not really enter

21 into my determination, anyway.

22 MR. TRIBLE: That is what we are talking

23 about, damages.

24 THE COURT: I think this is a different

25 question. This is a median strip case. This is

COMMISSIONERS OUT

not pertaining to this case, I agree there.

MR. HANEY: Your Honor, if it please the Court--

THE COURT: Are you going to have an instruction that they are not to consider the limited access as an element of damage?

MR. HANEY: Yes, sir.

THE COURT: Based upon what?

MR. HANEY: That is what for, as long as the landowner is given reasonable access to his property--

THE COURT: I mean, isn't that issue for the Commissioners to decide? Some of these limited access road are something like 1,000 feet parallel to of 100 feet or maybe 200 or 300 feet. It is not a matter for the Commissioners to take on their own view of the premises.

MR. HANEY: It is not a value, Your Honor, under the law, as I understand it in Virginia to have that as a compensable item, as an award compensation, based on that and for as long as there is reasonable access left the landowner. If the landowner shows he no longer has reasonable access to his property, then that would be a compensable item.

COMMISSIONERS OUT

THE COURT: As I understand the testimony here, when Mr. Taylor was asked how long the limited access road would be -- what was his answer?

MR. TRIBLE: 400 feet.

THE COURT: Isn't that a question for the Commissioners, whether it is compensable or not?

MR. HANEY: It is up to the landowner to show the access provided to him by the State Highway Commissioner is not reasonable. If it is shown to be not reasonable--

THE COURT: What was your question to this witness?

MR. TRIBLE: I asked, if it would be worth less, if he was limited to the service road, as to the element of damage, would that property not be damaged?

THE COURT: I think he said it was damaged.

MR. TRIBLE: Then, I will leave him alone.

MR. HANEY: I would like to have this point clarified.

THE COURT: He has abandoned this point. It is up to the Commissioners, whether they think it was damaged or not.

MR. TRIBLE: I am going to submit this instruction. This is the instruction I intend to

COMMISSIONERS OUT

1 submit, and this is the model instruction. If
2 Marshall does not like it, his people do. Nichol's
3 bears that out, Your Honor. There are all kinds of
4 cases under that.
5 There are a thousand cases under that, but
6 I could not find a case in Nichol's. I will be very
7 candid with the Court. So, I had to fall back on
8 the model instructions.
9 THE COURT: I think the majority of them
10 start with the one sentence there.
11 We have a long way to go. We are going to
12 have to keep on going and go right on.
13 MR. TRIBLE: I am not going to ask any
14 questions. I would like a five-minute break, after
15 we finish with this.
16 THE COURT: Tell the Commissioners we are
17 finished with this witness.
18 MR. HANEY: Has this matter been resolved?
19 For the record, I would--
20 THE COURT: He has withdrawn the question.
21 It may come up later.
22 MR. HANEY: Instead of having the people
23 going in and out of the courtroom--
24 THE COURT: Do you have this on eminent
25 domain?

COMMISSIONERS OUT

MR. HANEY: I discussed this matter with the Attorney General's office in anticipation of this, and that is the position we are going to take with regard to that.

THE COURT: You have taken the position that you do not want to read the law on it?

MR. HANEY: No, we take the position that the law supports it.

THE COURT: Bring the Commissioners back in.

COMMISSIONERS IN

NOTE: At this point, a luncheon recess is had from 12:00 to 1:00 o'clock p.m., whereupon the hearing is resumed, in the presence of the Commission, viz:

THE COURT: We are ready to proceed.

THE CLERK: Does counsel waive polling of the Commissioners?

MR. HANEY: Yes.

MR. TRIBLE: Yes.

THE COURT: Any further questions of this witness?

REDIRECT EXAMINATION

In the valuation of the property, the cost approach to value -- and we are talking about the before and after method -- the value of the land, the frontage of 189 feet, along with a uniform distance to provide a depth of one acre, was considered as highway commercial property. It was so improved, and it was so utilized by the owner.

The rear, 1.25 acres, was considered as basically a brush or woodland, part of which were shrub bushes, which had an estimated value placed thereon. Since none of it is within the take area nor was it damaged by virtue of the take, only one acre of highway commercial, I placed a value of $30,000.00 per acre, with the one and a quarter of rear land at $2,000.00 or $2,500.00, resulting in a total estimated land value of the whole at $32,500.00.

Under buildings, the one which was to be taken, the Linsly's Heritage House, Limited, the structure I mentioned before containing a total of 576 square feet, I placed a value of $28.00 per square foot, which comes to $44,128.00. The depreciation, I did not consider or allow any for the simple reason that I pointed out the older part, the original section as well as the new section which was just a couple of years old, had been completely rehabilitated, and I considered the condition as basically new.

D-2, the modular home office, which was a one-story structure of 1,028 square feet, I placed a value

the take.

The value of the take, the land, 0.48 acres of highway commercial property, I placed a value of $30,000.00 per acre, which equated to $14,400.00 which is in the take area. Building D-1, Linsly's Heritage House, Limited, 1,576 square feet, I placed a value of $44,128.00. D-2, the custom modular home office, 1,028 square feet, I placed a value of $21,472.00, giving a total of the buildings in the take of $65,600.00.

The other improvements in the take are as follows: landscaping, $1,000.00; the septic tank system, originally having a value of $1,000.00 placed thereon, with 50 percent in the take, $500.00; wells and appurtenances, two at $2,000.00 total; asphalt paving, $4,000.00 times the 75 percent within the take area, $3,000.00; the commercial signs, one electric pole sign, electric clock, and so forth, $1,250.00; and the second sign, approximately 4 by 8, $650.00; resulting in a total value of other improvements within the take of $8,400.00.

So, when we add up the land in the take, $14,400.00, and the buildings in the take, $65,600.00, plus the total of the other improvements, $8,400.00, you get a total estimated of the take at $88,400.00.

The remainder before the take, initially has one acre of highway commercial property. The take is

48 hundredths of an acre, thus leaving 52 hundredths of an acre of highway commercial property, and this is before the take. At $30,000.00 per acre, we wind up with $15,600.00. We have 1.25 acres of rear land at $2,000.00 an acre, or $2,500.00, giving a total estimated land value before the take of $18,100.00.

Before the take, we had the four miscellaneous out buildings which I described as in relatively poor condition, $600.00, and we had the metal clad service building and garage in the rear, containing 1,099 square feet, at $7,000.00, with a total building group value remaining before the take at $7,600.00.

Other improvements before the take, we had a septic tank system, initially at $1,000.00, times 50 percent which was in the take, leaves $500.00. We had asphalt paving, the before value of $4,000.00, and they took 75 percent, thus leaving 25 percent, or $1,000.00, giving us a total value of other improvements remaining before the take of $1,500.00.

So, the value of the remainder before the take would be $18,100.00 on the land, $7,600.00 on the buildings, and $1,500.00 on the other improvements, which gives us a total value before the take of $27,200.00.

Now, after the take, the residue will contain approximately 1.77 acres. This right-of-way line, the new right-of-way line is to be limited access. Now, the

1 plans provide or have provision for ingress and egress via
2 a gravel service road, which will extend from the north to a
3 cul de sac, which will generally be located in the general
4 area where you probably saw or viewed a mobile home, which is
5 currently being utilized as an office by Mr. Green, a modular
6 home office. This service road, of course, will replace any
7 ingress/egress the owner had previously had; thus, that will
8 be the only method in which he may reach the residue or the
9 rear portion of this property. Thus, the 0.52 acre which,
10 prior to the take, had a highest and best use, more or less,
11 as a rear woodland, highway commercial property before, it will
12 be reduced--
13 MR. HANEY: I object, Your Honor. If it
14 please the Court, if we could exclude the
15 Commissioners--
16 THE COURT: All right.
17
18 NOTE: At this point, the Commissioners
19 have left the courtroom.
20
21 COMMISSIONERS OUT
22 MR. HANEY: If Your Honor please, for the
23 record, I would like to state my objection to any
24 testimony as to damages to the residue as a result
25 of the service road.

COMMISSIONERS OUT

As I have previously discussed with the Court, we believe the law to be that as long as reasonable access to the property is afforded the property owner, that that is not a compensable item in that access is changed, and that is true as well as with limited access highways or as in other situations. As we have discussed with Your Honor, in other cases where there are median strips and so forth, that that all falls within the sole power of the State Highway Commissioner to regulate the flow of traffic, the security of traffic.

This is not a compensable item. I believe that Mr. Wilson was getting into this area, and we would object to that, Your Honor.

MR. TRIBLE: I do not exactly understand what Mr. Haney said. Mr. Wilson already testified a good while ago that the only means of getting to the property was by the service road, and there was no objection made. Obviously, that point has been waived at this time.

Now, his objection, I do not know--

MR. HANEY: We do not have any objection to him mentioning the service road.

MR. TRIBLE: As I understand what Mr. Wilson started to say, he said, because the fence is there

COMMISSIONERS OUT

now, it has a highest and best use--

THE WITNESS: What I was trying to get out is, by virtue of the fact that this residue would have limited access, where we had one acre prior to the take having a highest and best use as commercial property. The taking of 48 hundredths of an acre would result in the rear 52 hundredths of an acre, having a highest and best use before as commercial, would be reduced to back land afterwards. It no longer has highway frontage.

THE COURT: Is that what you are objecting to?

MR. HANEY: I would assume that would cause a reduction in value?

THE WITNESS: That would be true.

THE COURT: You are objecting to the fact that he is stating before the Commissioners that because of the fence, there would be a reduction in that value?

MR. HANEY: Because of the limited access road going into this property, yes, sir, causing a reduction in value.

THE COURT: Don't you concede that it has a less value with the access fence there?

MR. HANEY: No, Your Honor. Our contention

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is that for as long as the owner is allowed reasonable access to the property, that a change in access, or testimony which shows or tends to show a diminution in value because of the change, the access is not admissible testimony.

THE COURT: The testimony here is all this land or most of this land was commercial property on Route 17.

The testimony now is, this is not usable for commercial property, because the fence would be across the property and, also, it is a limited access road of possibly 400 feet.

MR. HANEY: Yes, sir.

THE COURT: Then, that there will be a gravel road into this residue; is that correct?

MR. HANEY: Yes, sir.

THE COURT: You are arguing that he should not be allowed to testify as to a lessening in value because of this circumstance?

MR. HANEY: Yes, sir, because of a change of access.

THE COURT: Even though the Commissioners viewed the property, and it has been pointed out by your witnesses that there will be an access service road, also, where the fence will be?

COMMISSIONERS OUT

MR. HANEY: Yes, sir.

THE COURT: Any further remarks to that objection?

MR. TRIBLE: Frankly, I do not quite understand it. I think his testimony is perfectly clear. We have many cases where there is a change due to construction, obviously diminishing the value of the land. Presumably, that is what they are doing.

If he wants to get into the question of access at this time, assuming he has not waived it by his prior testimony, I would simply rely upon, may it please the Court, the authority in Nichol's which I have previously cited.

THE COURT: I will state that it is the majority view in this country that it does limit the value. Of course, that is for the Commissioners to decide, and I will give them an instruction that they can base their value on, on their own view of the property, which they have a right to do. That is one of our earliest principles of eminent domain law.

The Court would state at this time that there have been hundreds of cases in this part of the Tidewater, Virginia that the Court has heard

COMMISSIONERS OUT

1 regarding Route 17, 360, 33, or whatever, and the
2 limited access service roads that I am cognizant
3 of are roads that are probably ten feet wide and
4 they parallel a fence that is maybe eight to ten
5 feet wide, eight to ten feet in height. They go
6 from many distances, the service roads, for maybe
7 200 or possibly up to 1,500 feet. I can take
8 judicial notice of these service roads, and I would
9 say, of course, it is not up to me whether it
10 damages the property or not. It is for the
11 Commissioners to decide.
12 I do not think it is a question of law
13 at this time for this gentleman to testify to this
14 fact. I think Mr. Haney brought up the fact the
15 Supreme Court, in a case of a dual highway -- I
16 full concur with that case. I think it is good
17 law that you have to go 400 or 500 feet down the
18 road before having a turn to go to your home. I
19 realize for the public's convenience that the road
20 has to be built, and it is necessary for proper
21 controls and turn-offs, and so forth. But, we are
22 dealing here with property that had a certain value
23 before the take, and it has changed considerably
24 after the take.
25 Therefore, the Court will allow the

COMMISSIONERS OUT

1 witness to answer the question.
2 MR. HANEY: If Your Honor please, for the
3 record, we would respectfully except to the
4 Court's ruling on this matter as to testimony to
5 the diminution in value because of the limited
6 access highway coming in by any witness, and my
7 exception or objection would continue for other
8 witnesses that the landowner might have.
9 THE COURT: Yes, sir. If there is
10 anything else you want to put in the record at
11 this time, Mr. Haney, you are free to do it.
12 MR. HANEY: I just wanted to say that,
13 Your Honor.
14 THE COURT: The same objection will apply.
15 We will treat it per your objection.
16 Let the Commissioners come back.
17
18 NOTE: At this point, the Commissioners
19 returned to the courtroom.
20
21 COMMISSIONERS IN
22 THE COURT: I would say for the record that
23 I think the questions of the Commissioners on the
24 view about this fence, how high, where it would be,
25 and so forth would indicate that they had some

1 concern of their own about it.
2 THE CLERK: Does counsel waive a polling
3 of the Commissioners?
4 MR. HANEY: Yes, ma'am.
5 MR. TRIBLE: Yes, ma'am.
6
7 BY MR. TRIBLE: (Continuing)
8 Q Would you continue with your testimony.
9 A Thus, the 52-hundredths of an acre portion,
10 having before a highest and best use as highway commercial,
11 would be reduced to woodland, and it would no longer possess
12 Route 17 or 33 frontage. The rear woodland, containing 1.25
13 acres prior to the take, is not considered to be damaged by the
14 take, with a highest and best use of this residue of 1.77 acres
15 being woodland only.
16 Now, the value of the remaining land after
17 the take, 1.77 acres, rear woodland, at $2,000.00 per acre,
18 gives a total land value after the take of $3,540.00.
19 There were four miscellaneous buildings,
20 frame storage sheds, having a before value of $600.00, which I
21 damaged out, and the metal clad service garage which is outside
22 the area of the take, which you saw this morning, had a before
23 depreciated value of $7,000.00 damage, with 50 percent being
24 taken, or having a value of $3,500.00, providing a total of
25 the building group after the take of $3,500.00.

1 Under other improvements, the drain field
2 and so forth, I damaged out the septic tank system, and I
3 damaged out completely the asphalt paving, for a total value
4 of other improvements after the take of no value attached, with
5 a total value of the residue after the take of $7,040.00.
6 The difference, we had a value of the
7 residue before the take of $27,200.00, and a value of the
8 residue after the take of $7,040.00, which is a difference of
9 $20,160.00, with enhancement as none, with total damages in
10 the amount of $20,160.00 to the residue.
11 Now, the metal clad service garage I
12 mentioned had a value before the take of $7,000.00, which I
13 damaged at 50 percent, or a value after the take of $3,500.00.
14 This structure is being used by Mr. John Green in conjunction
15 with his modular home office. I might point out that it is
16 going to have very restricted utility, and ingress or egress
17 to this facility will be via a residential cul de sac from the
18 service road. The type of business this gentleman is in
19 involves loading mobile units which are towed by tractor trailer,
20 and may range from 60 to 70 feet in length. It would be very
21 difficult to continue operation by restriction of cul-de-sac
22 ingress and egress to this structure, as has been in the past.
23 The septic tank system damaged out, also.
24 What we have, then, is a total estimated damage of $20,160.00.
25 On recap, we had a total take of $88,400.00,

and we had damages of $20,160.00, which gives a total of $108,856.00. In addition, I did make an allowance for relocation of survey points of $100.00, which gives a total take and damages of $108,956.00.

Q That is your opinion?

A That is my opinion of the take and damages to the property.

Q Your opinion as of September 7, 1978?

A Right, September 7, 1978.

Q In your expert judgment, has the State Highway Commissioner essentially taken the best part of this land?

A Yes, sir, that portion, 189 feet, the front tract. You have commercial property adjacent to it. You have an automotive shop, the Virginian Restaurant, and you have property just beyond this on the opposite side, commercial property.

Q As I understand it, the half an acre which will remain, which you considered commercial property prior to the take, by reason of the fence, it really has lost a lot of its value?

A By reason of the take, it no longer has direct access to the highway. Its ingress and egress is provided by the service road. It is not land locked.

MR. TRIBLE: Thank you.

you in a position to give these members of the Commission your views as to the value of the damages, if any, as of the date of the take, which I think was September 7, 1978?

A Yes, sir.

Q Just turn and face these gentlemen, and given them your views.

A I have seen extensive work with commercial property values, and I have had an extensive part in the development of the Essex Square Shopping Center in Tappahannock. That includes the Pizza Hut, the Southside Bank there, the McDonalds, and have a part to do with the Exxon, the Exxon Car Care Station, and also with Shoneys and several other developments adjacent to the Tappahannock Shopping Center.

The property down here is zoned -- of course, you have the business zoning in Middlesex County in this particular area of the Linsly property. I feel, in general, that it is one of the most advantageous locations in the county. We relied a lot on placing people in business areas and using the Virginia State Highway Department's traffic count. That is one of the largest things that we used.

In Essex County, for example, Route 17 and 360, one of the larger developments, you have an average daily car count of about 12,000. That is an average daily, year round. You would be surprised to know that in front of the property here, between Saluda and Glenns, and these are

1 official highway figures, you have approximately 7,005 cars
2 per day average, year round, and peaking more than that on
3 weekends. For example, Tappahannock will peak to 30,000 cars
4 per day in that stretch of 360 and 17.
5 Down here, we have a very similar situation,
6 but instead of 360, you have 17 and 33. Just bear in mind that
7 you have cars passing that location of 7,005 per day. Here
8 at the Courthouse, you have around 4,500 going east of here,
9 and at Cooke's Corner, you have approximately 5,000. But the
10 bulk of your traffic is from here to Glenns, on this particular
11 route.
12 First of all, you have this location, which
13 is an ideal commercial area.
14 I have used a basic replacement value on
15 the structures that were taken as a result of this condemnation.
16 First of all, you had a large structure, 1,576 square feet,
17 and this building was first built in 1949. Then, it was added
18 to in 1976. It was heated with a Carrier electric forced air
19 unit, which also served as an air conditioner. I put $30.00
20 a square foot on the replacement of that building. So, 1,576
21 square feet would be a value of $48,208.00 on that building.
22 The smaller structure, 1,204 square feet,
23 was built in approximately 1940. It also had a Carrier electric
24 heat, forced hot air system. It did not have an air condition-
25 ing unit, and I put a total of $20.00 a square foot replacement

a value on that land at $26,500.00 per acre, or a total value of the land at $59,625.00.

That gives a total value of before the take of $139,835.00.

Now, the take was .48 acres, and gives us a total of $2,650.00. I would value the take, plus 189 feet of frontage, at $12,720.00. That brings us to a value of $92,930.00.

The 1.77 acres that is remaining, would come to $46,950.00. This is very unusual, because the particular area that is remaining will be almost completely useless. It will not perk. I have a certification from the Sanitarian of the County, if you wish to introduce it, where he states, that the soil remaining is not suitable for septic tank or drain field.

You run into two things. First of all, the land in back of the trailer will not perk. It will be behind the fence. It is a long, limited access into the area. The Highway Department is providing an access to the 1.77 residue, but in my opinion, it is going to be pretty well useless. Nothing can be done there that is going to require any bath facilities in it or any water facilities which ultimately would be cut off. So, I feel that the residue of that land is not going to be worth more than $500.00 an acre, and can be used just for weather storage or something like

that.

I would say the damage to the residue would come out to $46,020.00, leaving a net figure of the total take and damages of $138,950.00.

Q What was your total take, including the buildings and the land, and what not?

A $92,930.00, with $46,020.00 damage to the residue, for a total of $138,950.00.

CROSS-EXAMINATION

BY MR. HANEY:

Q In arriving at the value of the land, I believe you stated you found the land before the take to have a value of $26,500.00?

A Per acre, yes, sir.

Q How did you arrive at that value? Did you use comparables or the income approach or the market approach?

A Yes, sir. Now, in this particular area, I would say you have few comparables. You might have a piece of property that sold for one figure, and, of course, not being a business zoning, it might be right across the street. You might have another piece of property that sells for something like half that amount.

I do have one comparable, Little Sue, which comes out to $29,078.00 per acre. That is down at

1 A Not specifically, like asking a question,
2 what do you think this building is valued at, but just on
3 basic replacement values in general. As I said, we do this
4 every day.
5 Q I believe that in your testimony, as I
6 understand it, that you did not make any separation as to the
7 value of the land, in as much as you valued the back portion
8 of the property at the same price as you did the portion that
9 fronted on 17?
10 A Yes, I took the 2.2 acres and valued that,
11 and took the .48 acres, and took a general figure per acre,
12 because if the front part could be used, if you could use a
13 septic tank, and if it was not behind the fence, and it was
14 a better access to it, the land could be used at that figure
15 that I gave you.
16 Q That was $26,500.00?
17 A Well, I said now it would be worth but so
18 much, since you could do nothing with it.
19 Q Originally, when you made the appraisal,
20 you appraised the back portion of the property, the same
21 butting on 17?
22 A Yes, because you have 189 feet of-- If you
23 take the basic road frontage, if you can still use your access,
24 you are going to be able to get to the highway. But, if there
25 is a fence, it cuts off all customers, and then, in addition,

you could not build a septic tank on the back land.

Q Yet, you valuated it at the same value?

A Because you would still have that 189 feet of frontage, but now, you could not use it, because you would have a hard way to get to it, and so forth.

MR. TRIBLE: I think before the take was made, it was twenty six thousand and some odd dollars?

THE WITNESS: The whole thing, yes, sir.

MR. HANEY: That is all the questions I have.

MR. TRIBLE: I have no further questions.

WITNESS STOOD ASIDE

JOHN H. LINSLY, the Respondent, called in his own behalf, having been previously sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. TRIBLE:

Q You and your wife own this property, which is the subject of this suit today?

A Correct.

Q Do you have an opinion as to the value of

your buildings, your land, signs, and what not, as of the date they were taken, and if so, tell these gentlemen.

A Yes, I do; $130,000.00.

MR. TRIBLE: Thank you, Mr. Linsly.

CROSS-EXAMINATION

BY MR. HANEY:

Q That is for the whole property before the take?

A Mr. Haney, that is what I felt that that property was worth. Since the take, the remaining property, I have cleared back there. I have got a tractor, a bulldozer in there to clear it, and it has been a period-- I knew we had to wait for the ground to dry, and this was for a period last spring of two weeks. The land is worth nothing to me back there now.

Q I am confused as to what this figure of $130,000.00 is for. Is that the value of the whole property before any portion was condemned, or what does that $130,000.00 represent?

A That $130,000.00 represents what the State has taken from me.

Q Of that portion, you have not designated any as damages to the residue?

A I am including-- I am a layman when it

comes to this. I was a business owner.

My $130,000.00 figure is what I felt it was worth to me. When you start figuring damages and real estate values, that has to be left up to the experts. What it was worth to me was $130,000.00.

MR. HANEY: Thank you.

WITNESS STOOD ASIDE

MR. TRIBLE: May it please the Court, we rest.

THE COURT: Any further evidence, gentlemen of the Bar?

MR. HANEY: No, sir.

NOTE: At this point, the Court and counsel retire to consider instructions. Following are objections and exceptions to the instructions:

IN CHAMBERS

INSTRUCTION NO. 10 (Refused)

MR. HANEY: We would object to this, inasmuch as we feel that for as long as the access is reasonable to the remaining property, that it is

THE COURT: Mr. Trible, counsel for the condemnee, objects and excepts to the Court giving this instruction, and I will rule that it has been passed upon by the Supreme Court as a model instruction.

NOTE: At this point, Court and counsel now return to the courtroom; the instructions are read to the Commissioners; thereupon, the case is argued by counsel which the reporter records but does not here incorporate into this transcript in the interest of brevity, following which the Court states as follows:

THE COURT: Thank you, gentlemen, for your closing statements.

Mr. Sheriff, there are three exhibits, including the photographs, and there are the instructions of the Court. Give the report to the Commissioners to make their finding on.

NOTE: At this point, the Commissioners retire to deliberate at 3:30 p.m., and return with a question at 3:35 p.m., viz:

COMMISSIONERS' REPORT

Filed: December 7, 1979

We the undersigned Commissioners appointed by the above-named Court on December 7, 1979, to fix the value of the land taken herein and damages, if any, which may accrue to the residue, beyond the enhancement in value, if any, to such residue, by reason of the taking, do certify that on December 7, 1979, we were duly sworn and went upon said land in the custody of the Sheriff in Middlesex County, Virginia, or one of his deputies, to view the same as directed by the Order of said Court, said land being briefly described as follows, to-wit:

> Being as shown on Sheet 3 of the plans for Route 17, State Highway Project 6017-059-101, RW-201, and lying on the west (left) side of the survey centerline and adjacent to the west existing right of way line of present Route 17, from the lands of Oliver D. Ulmet and Elaine A. Ulmet, opposite approximate Station 1490+42 to the south line of a 20 foot right of way opposite approximate Station 1492+30 and containing 0.48 acre, more or less, land.
>
> From a point lying on the west proposed limited access line opposite approximate survey centerline Station 1490+42 the lands of Oliver D. Ulmet and Elaine A. Ulmet thence along said west limited access line to a point opposite approximate Station 1492+30, the south line of a 20 foot right of way, being easements of access, light or air incident to the lands of the landowner abutting upon this proposed Limited Access Highway, any ramps, loops or connections at or with intersecting highways.

Upon a view of the property and upon such evidence as was before us, we did fix the value of the aforesaid

land taken by the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER, including any easements taken, at $90,000.00 and we do further fix the damages which may accrue to the residue, beyond the enhancement in value to such residue, by reason of the taking, at $35,000.00.

Given under our hands this 7th day of December 1979.

EXCEPTIONS TO COMMISSIONERS' REPORT

Filed: December 11, 1979

Your Petitioner, the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA, by counsel, respectfully takes exception to the Report of the Commissioners filed herein on December 7, 1979, and files these, his written exceptions to such Report, to-wit:

1. The Respondents were permitted, over objection, to introduce inadmissable evidence that an element of damages to the residue of the subject parcel was a change or reduction in access to said parcel by means of the construction of a "Limited Access Highway."

2. That the Respondents were permitted, over objection, to introduce inadmissable evidence as to damages to the residue of the subject parcel by reason of interference or change of the Respondents' access to the subject parcel without laying any foundation that such interference or change in access by your Petitioner constructing a "Limited Access Highway" was unreasonable, fraudulent or capricious.

3. That the Court erred in refusing to grant your Petitioner's Instruction #10, wherein the Court would have instructed the Commissioners that the "Limited Access Highway" to be constructed upon the land here being condemned is a new location, no part of which was included in

an existing public road which abutted upon the lands of the owners in this proceeding. Therefore, in determining the damages, if any, to said remaining land of the owners, the Commissioners will not consider that said remaining land had any right or easement of access, taken from it or the owners, for that reason that there was no such right or easements of access owned by the owners or appurtenant to the land described in the Petition at the time of the taking by the State Highway Commissioner.

4. That the Court erred in refusing Instruction #11 offered by your Petitioner which would have instructed the Commissioners that the owners of land abutting a public highway is only entitled to reasonable access to his property. His rights of access are subordinate to the right of the State to control traffic over its highways. If the Commissioners find that the landowners in this case will have reasonable access to the property after the construction of this project, the Commissioner shall not make any award for residue damages which might result from a change in access.

5. That the Court erred in instructing the Commissioners, over objection, in Instruction #A that the State Highway Commissioner in this proceeding was establishing by condemnation a Limited Access Highway and the establishment of such highway, under the law, prevents the Respondents from having access to said highway, and that their right of access to said highway is hereafter restricted to the use of a service road

as the only means of ingress and egress to the said Limited Access Highway; and the Court further instructed the Commissioners that, as a matter of law, that the said Respondents have a right and easement of ingress and egress to the existing highway by reason of the fact that their land abuts upon and adjoins the present highway and the Commissioners are instructed that in fixing the value of the property taken off of the landowners, and in determining damage to the residue of their property, the Commissioners shall take into consideration the fact that the landowners will not have an easement of ingress and egress to the new highway as heretofore from their abutting land and the Commissioners should allow just compensation for their right of ingress and egress to the highway which is terminated and extinguished in this proceeding, and for such damages to the residue of their land, if any, which they shall sustain by reason thereof.

6. That the award of the Commissioners was arrived at by them through a misconception of the principles of law which should have governed them in their action.

WHEREFORE, your Petitioner respectfully prays that the Court set aside the award of the Commissioners in this case and grant a new trial.

1 the landowner has addressed. I would say to Your
2 Honor that any mention on the view by a witness
3 for the State Highway Commissioner as to this
4 limited access highway or the fence there, any
5 introduction of evidence thereto is not to be
6 construed and it never was construed before the
7 Court or before the commissioners that this evidence
8 as to a limited access highway was to be taken as
9 an item of damage,and as Your Honor well knows,
10 the commissioners cannot make an award based on
11 the view solely.
12 So we would submit to Your Honor that
13 the fact that this was pointed out to the
14 commissioners, that the State Highway Commissioner
15 was candid in stating what was going to happen here
16 on the property.
17 We did not open the door to letting the
18 commissioners make an award for damages as a result
19 of this limited access highway.
20 THE COURT: Thank you, gentlemen at the
21 bar, for your statement.
22 Gentlemen, heretofore, the Court had ruled
23 on this matter, and, therefore, based on my prior
24 ruling, the Court would overrule the exceptions
25 heretofore filed.

ORDER OVERRULING EXCEPTIONS
AND CONFIRMING COMMISSIONERS' REPORT

Entered: February 28, 1980

This day came the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA, by his attorney, and came also the landowners, JOHN H. LINSLY and JEAN B. LINSLY, by their attorney, and it appearing to the Court that the Report of the Commissioners herein before appointed with the Certificate of the Clerk of this Court administering the oath to said Commissioners, was on December 7, 1979, duly returned to and filed by the Court herein; that Exceptions to the said Report were duly and timely filed by the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA, the Petitioner herein; that on January 28, 1980, the Court heard the arguments of counsel for the parties hereto on the said Exceptions; that the Court overruled the said Exceptions; the Court doth so find;

That it appearing to the Court that the said Commissioners ascertained that the value of the land taken herein was $90,000.00, and that the damages to the residue, beyond the enhancement in value to the residue by reason of the taking, was $35,000.00, and it appearing that the said Report should be confirmed; therefore, the Court doth overrule the Exceptions to the said Report and doth approve, ratify, and confirm said Report in all particulars, and doth confirm unto the Commonwealth of Virginia the fee simple title to the following property:

> Being as shown on Route 3 of the plans for Route 17, State Highway Project 6017-059-101, RW-201, and lying on the

west (left) side of the survey centerline and adjacent to the west existing right of way line of present Route 17, from the lands of Oliver D. Ulmet and Elaine A. Ulmet, opposite approximate Station 1490+42 to the south line of a 20 foot right of way opposite approximate Station 1492+30 and containing 0.48 acre, more or less, land.

And the Court doth confirm unto the Commonwealth of Virginia an easement of access, light or air incident to the lands of the landowner abutting upon the proposed Limited Access Highway, any ramps, loops, or connections at or with intersecting highways, in the following property:

From a point lying on the west proposed limited access line opposite approximate survey centerline Station 1490+42 the lands of Oliver D. Ulmet and Elaine A. Ulmet thence along said west limited access line to a point opposite approximate Station 1492+30, the south line of a 20 foot right of way.

And, further, it appearing to the Court that the STATE HIGHWAY AND TRANSPORTATION COMMISSION has heretofore caused to be recorded in the Clerk's Office of this Court Certificate #C-29000 for $65,914.00, and that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of § 33.1-119 and § 33.1-122 of the Code of Virginia (1950), as amended; the Court doth ADJUDGE and ORDER that the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA pay to this Court on behalf of JOHN H. LINSLY and JEAN B. LINSLY the sum of $59,086.00, with interest at the rate of six percent

per annum (6%) on the sum of $59,086.00, this being the excess of the award over the amount represented by the aforesaid Certificate of Deposit, from the 7th day of September 1978, the date on which a Certificate was duly recorded in the Clerk's Office, to the date upon which the principal sum is paid into Court, said sum to be deposited in the Bank of Middlesex, Saluda, Virginia, to the credit of the Court in this cause.

And, it is further ORDERED that GEORGE M. TRIBLE, III, attorney for the landowners, shall provide for the release of record the following liens against the property acquired by the Commonwealth of Virginia under the aforesaid Certificate #C-29000, said liens being described as follows:

(a) Taxes due the County of Middlesex, for 1974.

(b) Judgment against Guy E. Williams in favor of Miller Chevrolet, Inc., dated September 3, 1960, in the amount of $438.21, plus interest, recorded in the Clerk's Office of this Court in Docket Book 5, page 254.

And, the Court doth further ORDER that LEONA B. BROWNLEY, Clerk of this Court, upon filing an abstract copy of this Order with the Bank of Middlesex, Saluda, Virginia, draw her check upon said fund on deposit in said Bank to the credit of this Court in this cause in the sum of $59,086.00, with interest at the rate of six percent (6%) per annum on the sum of $59,086.00, this being the excess of the award of the amount represented by the aforesaid Certificate of Deposit,

from the 7th day of September 1978, the date on which the Certificate was duly recorded in the Clerk's Office, to the date upon which the principal sum is paid into Court, payable to JOHN H. LINSLY, JEAN B. LINSLY, and GEORGE M. TRIBLE, III, their attorney, and forward the same to GEORGE M. TRIBLE, III, Attorney at Law, West Point, Virginia 23181 from the date of entry hereof.

And this action or cause is continued pending further Order of the Court.

And it is further ORDERED that the transcript of all hearings, testimony introduced, proceedings had upon the trial of this action shall become, and hereby are made, a part of the record in this case, pursuant to Rule 5:9 (a) of the Rules of the Supreme Court of Virginia.

NOTICE OF APPEAL

Filed: March 11, 1980

The Petitioner, the STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA, gives Notice of Appeal from the judgment of the Court rendered herein on February 28, 1980, pursuant to Rule 5:6 of the Supreme Court of Virginia. The entire transcript of the proceedings will be hereafter filed when completed.

ASSIGNMENT OF ERROR

The trial court erred in permitting the Landowners, over objection, to introduce inadmissible evidence of damage to the residue of the Landowners' property due to interference with or change in Landowners' access to that property by the construction of a limited access highway, without laying any foundation that the interference or change in access was unreasonable, fraudulent or capricious.

2. The trial court erred in refusing to grant Commissioner's Instruction No. 11.

3. The trial court erred in granting Landowners' Instruction "A," thereby instructing the commissioners that the Landowners have a right and easement of ingress and egress from their property to the existing highway as a matter of law, and that the restriction or limitation of access by reason of construction of a limited access highway is compensable in eminent domain proceedings, and must be taken into account in determining both the value of the land acquired and damages to the residue of the Landowners' property.

4. The trial court erred in overruling the exceptions to the commissioners report, and in not setting aside the award of the commissioners and granting a new trial.